

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

DIRECTV, LLC, a California limited liability company)	Case No.: 1:15-cv-00104-JMS-TAB
)	
)	
Plaintiff,)	
)	
v.)	
)	
VICTOR A. SPINA, JR., WILLIAM SPINA, MARTINSVILLE CORRAL, INC.)	
d/b/a TEXAS CORRAL a/k/a)	
SHELBYVILLE TEXAS CORRAL,)	
)	
Defendants.)	

FIRST AMENDED COUNTERCLAIM

ALLEGATIONS APPLICABLE TO ALL CLAIMS

1. The Court has jurisdiction of this Counterclaim because it is a compulsory counterclaim, arising out of the same series of transactions as those alleged in the Complaint in this matter, and therefore falls within this Court's supplemental jurisdiction.

FIRST CAUSE OF ACTION

BREACH OF CONTRACT

2. The preceding paragraphs are incorporated by reference as if set forth fully herein.
3. Starting in 2009, DirecTV agreed with MCI that DirecTV would make its TV Programming available to MCI on a month-to-month basis.
4. DirecTV, though one of its authorized retailers (Craig Spencer, DirecTV Dealer No. 1311782), installed DirecTV equipment at MCI's offices.
5. DirecTV activated all DirecTV receivers located at MCI's offices, thereby allowing them to receive DirecTV programming.

6. DirecTV sent MCI monthly invoices for a TV Programming subscription to PO Box 1925, Martinsville, IN 46151.
7. MCI paid DirecTV monthly in exchange for DirecTV making TV Programming available to MCI.
8. In June, 2014, DirecTV sent MCI an invoice for \$152.88 for a TV Programming subscription .
9. MCI paid DirecTV's invoice using the following check, which DirecTV accepted and deposited in late June, 2014:

MARTINSVILLE CORRAL, INC.
P.O. BOX 1925
MARTINSVILLE, IN 46151
(765) 342-7940

HOME BANK
MOORESVILLE, IN 46155
71-70842740

NO. 9031

PAY: *Am Annual Qty too 63/* DATE *6/20/14* AMOUNT *152.88*

TO THE ORDER OF *DirecTV* *UM*

04548353 6414
Check #21 FOR DEPOSIT J.P. MORGAN BANK N.A.
REGULUS-CHICAGO 08015707 002314
25295 1 9 283

DO NOT WRITE, STAMP, OR SIGN BELOW THIS LINE
NEED TO OPEN PAYMENT INFORMATION TO OPEN

ENCLOSURE HERE

Security Features:
• Watermark: The word "MCI" is visible in the background.
• Microprint: The words "MCI" and "CORRAL" are printed in tiny letters along the top and bottom edges.
• Color: The check is printed in various colors (blue, green, yellow, and red).
• Hologram: A small, circular, multi-colored hologram is located in the upper right corner.
• Ink: The ink is of high quality and does not bleed through.

10. By DirecTV accepting MCI's payment for a subscription, DirecTV became contractually obligated to provide its TV Programming beyond June 27, 2014.
11. Despite having received and deposited MCI's subscription check dated June 20, 2014, DirecTV breached its agreement with MCI by prematurely cutting off MCI's TV Programming on June 27, 2014.
12. MCI was damaged by DirecTV's breach.
13. Lonstein Law Office, P.C. represents DirecTV.
14. Lonstein Law Office, P.C. provides legal services to DirecTV on a contingent fee basis.
15. Lonstein Law Office, P.C. is in the business of sending demand letters to persons that allege the person as intercepted communications, then attempting to negotiate settlement agreements with said persons on a basis that makes it cheaper for the persons to settle than to defend a claim, and then splitting the proceeds with DirecTV.
16. On June 27, 2014, the same day that DirecTV wrongly cut-off MCI's TV Programming, Lonstein Law Office, P.C. sent MCI the follow letter:

Lonstein Law Office, P.C.

Attorneys and Counselors at Law

80 North Main Street, P.O. Box 351
Ellenville, NY 12428
Telephone (845) 647-8509
Facsimile (845) 647-6277
Email: Assistant@Signallaw.com

*Wayne D. Lonstein
Julie Cohen Lonstein

Dawn M. Conklin
Christopher Hufnagel

*also admitted in NJ, PA & MA

June 27, 2014

Martinsville Corral, Inc
PO Box 1925
Martinsville, IN 46151

Re: DIRECTV, LLC v. Shelbyville Texas Corral, et al.
Our File No: ES14-13IN-07
Unauthorized Exhibition of DIRECTV Programming
Date of Audit: June 4, 2014

Dear Sir/Madam:

Please be advised that this firm has been retained by DIRECTV regarding the unauthorized reception and commercial display of DIRECTV programming at your establishment in violation of the Federal Communications Act and DIRECTV customer agreements.

According to information obtained by DIRECTV, your commercial establishment displayed DIRECTV programming on June 4, 2014, without appropriate authorization from or proper payment to DIRECTV. An independent auditor observed and recorded your exhibition of DIRECTV programming. Screen shots from that video, verifying your exhibition, are enclosed.

The purpose of this letter is to afford you an opportunity to attempt to resolve this matter through informal discussion. We respectfully request that you or your legal representative contact our office via telephone at (845) 647-8509, or via email at Assistant@Signallaw.com, within seven (7) days of the date of this letter in order to discuss this matter in greater detail. After that date, DIRECTV will abandon its attempts to negotiate and/or amicably resolve this matter.

If you believe that you have a valid DIRECTV Public Viewing Account, please have your account number available when calling our office.

While we are willing to discuss this matter with you, DIRECTV will not imprudently and indefinitely wait for you to respond. Should you fail to respond as requested above, please be advised that we are authorized to take the necessary measures to preserve and enforce DIRECTV's rights and remedies under federal and state law. We look forward to speaking with you about this matter.

Very truly yours,

LONSTEIN LAW OFFICE, P.C.

By: Julie Cohen Lonstein
JCL/rk

17. In follow up communications, Lonstein Law Office, P.C. threatened that MCI "will be liable for my client's attorneys fees as well as their own. See [§605(e)(3)(B)(iii)]" and

demanded on behalf of DirecTV that MCI pay \$100,000 for allegedly “intercepting” DirecTV’s TV programming.

18. DirecTV’s breach and its present suit was and is in bad faith, outrageous, frivolous and without justification. At the time DirecTV wrongfully cut-off MCI’s subscription, DirecTV’s own internal records confirmed that its authorized dealer had installed the DirecTV equipment at MCI’s offices, and that DirecTV itself had activated those receivers for receipt of DirecTV programming, and that DirecTV had accepted MCI’s subscription.

19. DirecTV’s breach was part of a concerted plan, in combination with Lonstein Law Office PC, to extort money from MCI in an effort to avoid the prospect of ruinous litigation to be filed by DirecTV.

PRAYER FOR RELIEF ON COUNTERCLAIM.

MCI prays that this Court grant it the following relief:

1. Award MCI its actual damages, punitive damages, attorney’s fees and costs
2. For other relief as this Court determines to be just and appropriate.

DEMAND FOR JURY

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, MCI hereby demands a trial by jury in this action of all issues so triable.

Respectfully submitted,

By: /s/ Paul B. Overhauser

Paul B. Overhauser

OVERHAUSER LAW OFFICES LLC

740 W. Green Meadows Dr., Suite 300

Greenfield, IN 46140-4019

Phone: 317-891-1500

Fax: 866-283-8549

Attorneys for William A. Spina, Jr., Victor

A. Spina, Jr., and Martinsville Corral, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing is being filed electronically, and notice hereof will automatically be sent to all counsel of record that participate in electronic filing, by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

By: /s/ Paul B. Overhauser

Paul B. Overhauser